

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION

MARIE TOOLE AND	)	
CHRIS TOOLE,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	CIVIL ACTION NUMBER
	)	2:06-CV-652-VPM
ALFA MUTUAL INSURANCE CO;	)	
MATTHEW CHUPP;	)	
DON BRAMLETT, Fictious Defendants A-F	)	
	)	
Defendants.	)	

**PLAINTIFFS' VOLUNTARY LIMITED MOTION TO DISMISS THE WANTONNESS  
CLAIM AS TO DEFENDANT MATTHEW CHUPP AND THE NEGLIGENT/WANTON  
ENTRUSTMENT CLAIM AS TO THE DEFENDANT DON BRAMLETT**

COME NOW the Plaintiffs, by and through their attorney, and submit the following  
Voluntary Limited Motion to Dismiss and in support therefore would state the following:

1. The Plaintiffs and Defendants have completed the initial round of paper discovery and party depositions.

2. After reviewing the testimony and records obtained from the discovery process it does not appear that Defendant Don Bramlett was guilty of negligent/wanton entrustment nor does it appear that the Plaintiff can prove that the Defendant Matthew Chupp was wanton in the manner he drove the Bramlett's vehicle on July 9, 2004.

3. However, it is clear and undisputed from Defendant Chupp's deposition testimony (Chupp Depo. Page 19, Line 6-9; Page 23, Line 20-24; Page 24, Line 12-21; Page 31, Line 7-12) and from his filings before this Court, (Motion for Summary Judgment) that Defendant Chupp was negligent in the manner he drove the Bramlett's vehicle on July 9, 2004.

WHEREFORE, the Plaintiff voluntarily dismisses the wantonness claim filed against the Defendant Matthew Chupp, and voluntarily dismisses the negligent/wanton entrustment claims filed against the Defendant Don Bramlett. The Plaintiffs' remaining claims of negligence as to the manner in which Defendant Chupp injured Plaintiff Toole with his vehicle are not due to be dismissed and it is respectfully requested that the Court deny the Defendant's Motion for Summary Judgment as to the negligence claim against Defendant Chupp. Further, any claims for Summary Judgment as to the loss of consortium claim, filed by Plaintiff Marie Toole's husband, Chris Toole, and which were directly caused by Defendant Chupp's negligence, should also be denied, since those claims will all be an issue for the trier of fact to determine at trial.

(s) Jim S. Calton, Jr. \_\_\_\_\_  
Jim S. Calton, Jr.  
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CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing document by placing same in the U.S.mail, postage paid January 8, 2007 and properly addressed and electronically emailed to.

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This the 8 day of January, 2007.

(s) Jim S. Calton, Jr.

OF COUNSEL